

Stephanie Emmons' summary judgment affidavit states that she has been practicing law since 1987. She indicates that she was employed as an Assistant District Attorney for the Travis County District Attorney's Office from 1990 until 2000. According to Emmons, at the time of Jayla Belton's death and the resulting prosecutions of LaCresha Murray, she held the position of Chief Juvenile Prosecutor for the Travis County District Attorney's Office. [R.E. tab 4 (Rec. Vol. 7, p. 1567)] Emmons states that she focused on juvenile prosecution for at least ten (10) years, and she was regularly asked to provide training to law enforcement, juvenile probation officers, and attorneys. [Id.] In addition to her education and training, Emmons says she relied on her experience, research, and her continuing legal education seminars in the areas of juvenile prosecution in her day-to-day practice of law. [Id.]

Emmons' affidavit states that the death of Jayla Belton occurred on May 24, 1996, and that she was out of the office on vacation on that date. [Id.] Emmons was aware of Jayla Belton's death through local news reports, but she did not know that there was a juvenile involved. [Id.] Emmons states that the first time she was contacted regarding LaCresha Murray was Tuesday, May 28, 1996, when she was contacted by a City of Austin Police Department Officer. [Id.] Emmons indicates this was a routine contact, and as Chief Juvenile Prosecutor, she was routinely contacted by law enforcement whenever there was a possible juvenile suspect in a homicide case. [Id.]

According to Emmons, she was told that there may have been an eleven (11) year old juvenile girl involved, and that a juvenile sister was also present and possibly involved. [Id.] When Emmons was contacted, she was

made aware that there was not sufficient evidence to take these juveniles into custody, and told that LaCresha Murray and her sister would need to be questioned. [Id.] Emmons states that they decided to meet on Wednesday morning to discuss the case. [Id., p. 1568] According to Emmons' summary judgment affidavit, she went to meet with the APD Homicide Division on Wednesday, May 29, 1996. [Id.] Emmons states that during their meeting they discussed the questioning of LaCresha Murray. [Id.] Emmons states that she was aware that both juveniles had been removed from their home and were at the Texas Baptist Children's Home. According to Emmons, under existing Texas Law, the Texas Baptist Children's Home was not a detention facility. [Id.] Emmons states that she was not aware of any indices of custody, and that she understood their goal to be to obtain information or admissible evidence regarding Jayla Belton's death, and to comply with the Texas Family Code. [Id.] Following the meeting, Emmons returned to her office. [Id.] Emmons remembers having some discussions with another attorney in the District Attorney's Office and briefing her on the situation. According to Emmons they discussed probable cause issues and the law regarding questioning of LaCresha Murray. [Id.] According to Emmons, at that time, based on her education, training and experience, she had a good-faith belief that there was not a legal requirement for magistration because there was insufficient probable cause to take Murray into custody, and because she was not currently in custody. [Id.] It was Emmons' good-faith interpretation of the law that CPS's taking legal possession of a minor did not equate to a detention as set out in the Texas Family Code. [Id.] Emmons states that to her knowledge there was no Texas Law directly on point at

that time which contradicted her opinion. [Id.] Emmons does not remember discussing this issue with homicide detectives because it seemed to her to be understood that Murray was not in a detention facility and not in custody at the time of her questioning. [Id.]

Emmons states that contrary to Plaintiff's allegations, she did not discuss and implement a plan to interrogate LaCresha Murray alone. Emmons states that she was never on the premises during any pre-referral interview with LaCresha Murray, nor did she participate in any pre-referral interview with LaCresha Murray. Moreover, Emmons did not provide any specific questions to law enforcement for use in the interview of LaCresha Murray. [Id.] Emmons states that she had no reason to believe that Murray's Fifth Amendment Rights were violated. [Id.] Emmons was the prosecutor in both juvenile cases against LaCresha Murray for her involvement in the death of Jayla Belton. Any involvement Emmons had in the case was in furtherance of and preparation for the prosecution of the case, and in her role as a prosecutor. Emmons explains that she presented the case to the grand jury, participated in pre-trial hearings and tried the LaCresha Murray cases. [Id.]

Emmons states that all of her actions taken in relation to LaCresha Murray were objectively reasonable under the circumstances, taken in good faith in the course and scope of her employment, and within her responsibilities and role as a prosecutor. Emmons states that she never took any action relating to LaCresha Murray with the intent to violate any of her constitutional or statutory rights, nor did she act with deliberate indifference toward Murray's rights. [R.E. tab 4 (Rec. Vol. 7, p. 1569)] Emmons affirmatively states that she did not conspire

with anyone to violate any of Murray's constitutional or statutory rights. In fact, Emmons states that it was not her personal practice to knowingly aid or conspire with law enforcement in gathering evidence in violation of state or federal law, and that she did not take any such actions in relation to the LaCresha Murray case. [Id.]

In addition to the affidavits of Blazey and Emmons, Defendants provided an affidavit from the elected Travis County District Attorney Ronnie Earle ("Earle"). Earle's affidavit contained expert opinions regarding the actions of Blazey and Emmons. Earle's affidavit states that the opinions contained in his affidavit were based on his training, education and experience. Information concerning Earle's experience and background was attached to his affidavit in addition to the information set out in the affidavit itself. [Id.] Earle's affidavit incorporates the affidavits of Dayna Blazey and Stephanie Emmons that he reviewed prior to rendering his opinions. [Id., p. 1558, 1560] Based on Earle's education and experience (as set out in his affidavit), Earle rendered his professional opinion that Dayna Blazey's and Stephanie Emmons' actions relating to LaCresha Murray were objectively reasonable under the circumstances. [Id., p. 1560] Earle states that based on the status of Texas Law at the time, any reasonable prosecutor might have believed that such actions were appropriate under the same or similar circumstances. [Id.]

Plaintiff never objected to any of Defendants' summary judgment evidence. In response to Defendants' Motion for Summary Judgment, Plaintiff filed an eight (8) page response with no evidence attached. [R.E. tab 5 (Rec. Vol. 8, pp. 1798-1806)]

III. PETITIONER'S MISSTATEMENTS OF FACT OR LAW

Petitioner's writ contains a multitude of misstatements of fact and law, including the following:

A. Petitioner's Misstatements of Facts

Petitioner clouds the facts and issues in this case, and her analysis ignores that, although her allegations are plentiful, her evidence to support her allegations is non-existent.

1. Petitioner's False and Unsupported Opinions and Allegations Regarding Blazey and Emmons

Petitioner repeatedly inserts her unsupported opinions. For example, she labels the two Assistant District Attorney Defendants as "unethical assistant district attorneys" even though there is absolutely no evidence in the record that any actions of these two specific district attorneys were unethical. See Pet., pp. 11, 14, 17, 22. Petitioner also repeatedly alleges that the "unethical" assistant district attorneys "conspired to violate the constitutional rights" of Petitioner and "conspired to avoid taking LaCresha before a magistrate prior to interrogating her as a target." See Pet. pp. 11, 12, 14. Petitioner also alleges that LaCresha was a "target defendant" in Jayla Belton's death, and that "[b]efore the interview, Detective Reveles and Pedraza and Assistant District Attorney Emmons agreed to interrogate LaCresha without complying with the law that LaCresha be taken before a magistrate and not be questioned without a parent, guardian, or attorney present." Pet., p. 12. In addition, Petitioner alleges that "these individuals conspired to avoid and

ignore clearly established law" Pet., p. 12. Again, there is no evidence to support any of these allegations in the record.

To the contrary, the summary judgment evidence demonstrates that Blazey did not meet with or specifically advise law enforcement regarding the questioning of Murray. Although Emmons did meet with homicide detectives, the summary judgment evidence proves that their conversation focused on how to question a juvenile who was not in custody. See affidavits of Blazey and Emmons, R.E. tab 4, Rec. Vol. 7, pp. 1563-69; see also Section II.B, *supra*.

Despite the lack of any evidence specifically implicating Assistant District Attorney Blazey, Petitioner continues to misrepresent the record. For example, Petitioner continues to include Blazey in her allegations and states generally, "these officials presented this confession to the court." Pet., p. 17. Petitioner also alleges that "*these state actors* conspired to avoid taking LaCresha before a magistrate . . . performing that interrogation . . . and using the unlawfully obtained confession in state court trials." Pet., p. 11 (emphasis added). In addition, in formulating her "question presented," petitioner states that "following a finding that LaCresha's constitutional rights were violated by *these state actors* . . . the Fifth Circuit held . . ." Pet., p. 1 (emphasis added). There is absolutely no evidence that Blazey or Emmons "performed" the interrogation and no evidence that Blazey presented anything to the court or participated in the trial of Petitioner. In fact, the uncontested summary judgment evidence establishes that Blazey did not advise police regarding the interrogation and did not participate in the trial. R.E. tab 4, Rec. Vol. 7. Further, there was no Fifth Circuit "finding

that LaCresha's constitutional rights were violated by *these state actors.*"

2. Petitioner's False and Unsupported Factual Assertions Regarding the Actions of Others

Petitioner alleges that Defendant Earle is a respondent in this case, but despite the continued inclusion of his name in the style of the case, Earle was not a party to the interlocutory appeal because all of the causes of action against him were resolved when Summary Judgment was ordered in his favor at the district court level. Pet., p. 11; see also, Pet. App. C, p. 39. In addition, Petitioner incorrectly states that "Respondent Earle as District Attorney of Travis County, Texas subsequently dismissed all of the charges against LaCresha because he could not obtain a conviction without the illegal confession." Pet., p. 11. There is no summary judgment evidence in the record that the case was dismissed personally by Earle, and no evidence of a specific reason for the dismissal.

In addition, Petitioner refers to Angela McGowan as a "Child Protective Services employee." Pet., p. 12. McGowan was actually a City of Austin Victim Services employee, and is represented by the City Attorney's Office in this case.

Petitioner also inaccurately describes the district court's summary judgment ruling when she states, "[t]he District Court determined that the assistant district attorneys were not entitled to qualified immunity *because their actions, all taken before the interrogation of 11 year old LaCresha, were actions of conspirators, and not merely conferencing with detectives.*" Pet., p. 16

(emphasis added). This is an untrue and inaccurate description of the court's summary judgment ruling. Pet. App. C.

3. Petitioner's Misleading and Incomplete Factual Assertions

Petitioner makes an incomplete and misleading factual statement when she states that she "in effect, was ordered as of May 23, 2003 not to pursue discovery from any Defendant." Pet., p. 9. This statement is incomplete and misleading because Petitioner fails to inform the Court that this temporary halt and stay of discovery was only in effect until the court ruled on the Rule 12(c) Motions to Dismiss on the pleadings on July 30, 2003. Pet. App. B. At that time, the court ordered that "the parties shall RESUME DISCOVERY and the parties shall COMPLETE DISCOVERY within 90 days of the date of date this order is entered." Pet. App. B, p. 111.

B. Petitioner's Misstatements of Law

Petitioner's misstatements of law are discussed, *supra*, under the subheading "II. Reasons for Denying the Writ."

IV. CONCLUSION AND PRAYER

After reviewing the Summary Judgment Record and applicable law, the Fifth Circuit Court of Appeals correctly reversed the district court's denial of qualified immunity with regard to Murray's Fifth Amendment claim. The Fifth Circuit's decision is correctly limited to Fifth Amendment claims for civil damages. The decision is consistent with prior United States Supreme Court and Circuit rulings on

the issue of when and how the Fifth Amendment can be violated and consistent with legal precedent regarding the qualified immunity analysis. Therefore, Respondents respectfully request that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

DAVID A. ESCAMILLA
Travis County Attorney
Travis County, Texas
P.O. Box 1748
Austin, Texas 78767
(512) 854-9513 telephone
(512) 854-4808 facsimile
By: ELAINE A. CASAS*
Texas State Bar No. 00785750
JENNIFER KRABER
Texas State Bar No. 24027426

*Attorneys for Respondents Dayna
Blazey and Stephanie Emmons*

**Counsel of Record*